

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRIGHTSIDE ACADEMY
Employer

and

Case 08-RC-185999

OHIO COUNCIL 8, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO
Petitioner

ORDER REMANDING

The Employer's Request for Review of the Regional Director's Decision on Objections and Certification of Representative raises substantial and material issues that can best be resolved after a hearing. In the interest of ensuring the integrity of the Board's election processes, the request for review is granted, and the case is remanded to the Regional Director for consideration of the Employer's Objection.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., March 14, 2017

Member Pearce, dissenting.

Contrary to my colleagues, I would deny the Employer's request for review of the Regional Director's decision to dismiss its election objections. I find that the Employer failed to establish any basis under Sec. 102.67(d) of the Board's Rules and Regulations, let alone a compelling one, for reversing the Regional Director and granting its Request for Review. Thus, the Employer failed to "present evidence that raises substantial and material factual issues," warranting a hearing. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992). See also *Cumberland Nursing & Convalescent Center*, 248 NLRB 322, 323 (1980) ("Simply put, it is not enough for the objecting party's evidence merely to imply or suggest that some form of prohibited conduct has occurred.").

Even accepting the Employer's assertion in its Offer of Proof that a unit employee presented the Petitioner's election observer with a green carnation when the employee came to vote, this would not warrant setting aside the election. The flower, one of many the Union purportedly distributed to all employees, was presented by a unit employee not alleged to be a Union agent. At *most*, the flower was akin to a union button or insignia that observers are permitted to wear. See, e.g., *The Nestle Co.*, 248 NLRB 732, 742 (1980) (unions' observers at

the polling place wearing a button and a bumper sticker bearing campaign insignias along with their observer badges provided by Board agent not objectionable), enfd. without opinion, 659 F.2d 252 (D.C. Cir. 1981). That the carnation purportedly rested on the observers' table during the polling period would not render it objectionable. See *Flamingo Las Vegas Operating Co.*, 360 NLRB 243, 246 fn. 12, (2014) (use of table cloth bearing the employer's logo and name on the election table was not objectionable). Nor would the employee's simultaneously handing the Petitioner's observer money, which the observer put away, warrant a hearing.

Because I find that the alleged conduct would not warrant setting aside the election even if proven, the Regional Director did not err in overruling the objections without a hearing,

MARK GASTON PEARCE,

MEMBER